

I consider, therefore, Mr. Latrobe as representing in law, and in fact, the American Life Insurance and Trust Company, and the estate of Joseph Thornburg, and though the assets of the former have been assigned, and some of the *cestui que trusts* of the latter, have declared their dissent to the prayer of the petition, I do not, on that account, conceive that he has no standing in court, or title to be heard. The proof shows that the surviving assignee of the company sanctions and approves of the course, and though some of the *cestui que trusts* of the estate of Joseph Thornburg do not concur with the petitioner, there are other parties interested who can only be represented by him.

I do not agree, however, with the petitioners' counsel in thinking, that if loss to the creditors represented by him occurs, in consequence of the proceedings in this case, that any responsibility for such loss would be thrown upon him. Of the jurisdiction of this court to decree a sale of the property there can be no doubt, and if loss should happen by reason of the neglect or default of the agents selected to make the sale, which, however, is by no means probable, as it is conceded by the petitioners that they are in every way worthy the confidence of the court, it would seem impossible to contend that such loss would fall upon a party, no way responsible for such selection. If there should be loss under such circumstances, it would be a misfortune incident to the administration of justice, but the fault of no one, and for which no one would be answerable.

The case then to be considered is simply this: a decree passed this court on the 22d of last month, for the sale of the real estate of the late Patrick Macauley, for the payment of his debts, upon an ascertained deficiency of the personal estate for that purpose, and trustees, representing the parties to the suit, are appointed to make the sale. Two days subsequently, creditors to a large amount come in, and upon the ground of surprise, ask that the decree may be so far modified, as that a trustee named by them, may be associated with the trustees already appointed. It is not denied, but on the contrary is admitted by the petition, and by the petitioners' counsel in his oral argument, that the trustees appointed by the decree, are every way